

In Praise of the Tavares Report: Europe finally said No to Viktor Orbán

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Today Europe acted to hold the Hungarian government to the constitutional values that it eagerly endorsed when it joined the European Union nearly a decade ago.

The action came in the form of the [Tavares Report](#), which sailed through the European Parliament with many votes to spare. The report provides a bill of particulars against the Fidesz government and lays out a strong program to guide European Union institutions in bringing Hungary back into the European fold. With the passage of this report, Europe has finally said no to Prime Minister Viktor Orbán and his constitutional revolution.

The Tavares Report is by far the strongest and most consequential official condemnation of the Fidesz consolidation of power over the last three years. And it creates a powerful set of tools for European institutions to use in defending the long-term prospects for Hungarian democracy.

The report passed with a surprisingly lopsided vote: 370 in favor, 248 against and 82 abstentions. In a Parliament split almost evenly between left and right, this tally gave the lie to the Hungarian government's claim that the report was merely a conspiracy of the left. With about 50 of the 754 MEPs absent, the total number of yes votes was still larger than the total number of MEPs of all of the left parties combined. In short, even if all MEPs had been present, the left alone still couldn't account for all of those votes. And since the 82 abstentions had the effect of allowing the report to go forward, they should be read as soft "yeses" rather than undecided or negative votes.

Most of the abstentions no doubt came from Fidesz's own party in the European Parliament, the European People's Party (EPP). Many EPP members signaled ahead of time that they could not back Orbán but also would not vote overtly against the position of their party, which officially supported him without whipping the votes. Fidesz had been counting on party discipline to save it. But now it is clear that Fidesz is terribly isolated within the EPP.

The tally on the final report was not a roll-call vote, so we do not know for sure just who voted for it in the end. But the roll-call votes on the proposed amendments to the bill (see pp. 106-119 of this complicated [document](#)) revealed that many members of the European People's Party (EPP) and the even-more-conservative group of European Conservatives and Reformists (ERC) voted to keep the report from being diluted at crucial junctures. Each attempt to weaken the report was rejected openly by 18-22 EPP votes and by 8-12 ERC votes. We can guess that the MEPs who rejected the hostile changes must have voted in favor of the report

in the end, along with even more of their colleagues who could at that point vote anonymously.

For a government that believes that majorities are everything and supermajorities are divine, it must have been hard for Fidesz to see only one-third of those in the European Parliament voting in its defense, when conservatives occupy about half of the seats. Since many of the votes in the Fidesz column were from cranky Euro-skeptics who simply did not want the EU to gain more powers rather than from those who were solidly backing the broader Fidesz view of the world, the defeat is even more humiliating. Where was the United European Right when Orbán needed them? Apparently not in his camp.

When he dramatically appeared in the European Parliament for the debate yesterday, Orbán claimed that the report represented the persecution of a well-meaning right-wing government by the unified and hostile European left.

Today, with this extraordinary vote, we saw a coalition of left and right MEPs standing up together for the values of Europe.

The Tavares report is named after Rui Tavares, the Portuguese MEP who was the rapporteur on this patient and careful study of the Hungarian constitutional revolution. He deserves much of the credit for the factually impeccable report and as well as for skillfully guiding it through a complicated and perilous process. Despite repeated attempts to amend the report, gut its strong conclusions and weaken its remedies by Fidesz MEPs and their allies, all efforts to change the report in any substantial way failed at every stage.

With its acceptance today of the Tavares Report, the European Parliament has created a new framework for enforcing the principles of Article 2 of the Treaty of the European Union, which proclaims that the Union is “founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.”

So what, concretely, does the report do? It puts a very clever system of monitoring and assessment in place. While there are many elements in the report, the most important four elements are these, identified by paragraph number in the report as voted by the Parliament today:

1. An “Article 2 Alarm Agenda” which requires the European Commission in all of its dealings with Hungary to raise only Article 2 issues until such time as Hungary comes into compliance with the report (para. 69). This Alarm Agenda effectively blocks all other dealings between the Commission and Hungary until Hungary addresses the issues raised in the report.
2. A “Trilogue” (a three-way dialogue) in which the Commission, the European Council and the European Parliament will each delegate members to a new committee that will engage in a close review of all activities of the Hungarian government relevant to the report (Para. 85). This committee is charged with assessing the progress that Hungary is making in complying with the list of specific

objections that the report identifies. The Trilogue sets up a system of intrusive monitoring, much more intrusive than the Excessive Deficit Procedure (EDP) from which Hungary just escaped. Under the EDP, European bodies only looked at the budget's bottom line to determine whether Hungary's deficit was within acceptable bounds. Under the Trilogue, the committee can examine anything that is on the long list of particulars that the report identifies as within its scope.

3. A "Copenhagen Commission" or high-level expert body through which a panel of distinguished and independent experts will be assigned the power to review continued compliance with the Copenhagen criteria used for admission to the EU on the part of any member state (para. 78-80). The idea behind this body, elaborated in a report by my Princeton colleague [Jan-Werner Müller](#), is that non-political experts should be given the task of judging whether member states are still acting on the values of Article 2. Since Orbán kept claiming double standards and dirty politics all of the way through this process in the European Parliament, a Copenhagen Commission consisting of impeccable experts and modeled on the Council of Europe's Commission for Democracy through Law (the Venice Commission) would move the process of fact-finding and assessment from political officials to non-partisan experts.

4. And in the background, there is still Article 7 of the Treaty of the European Union. Article 7, which identifies a procedure through which an EU member state can be deprived of its vote in the European Council and therefore would lose representation in the decision-making processes of the EU, is considered the "nuclear option" – unusable because extreme. But the Tavares Report holds out the possibility of invoking Article 7 if the Hungarian government does not comply with the monitoring program and reform its ways (para. 86). Because the Tavares Report lays out detailed expectations of the Hungarian government, the Parliament and the Council who would have to vote on Article 7 in the end would have a strong factual record to work with if they decided to go nuclear.

These are important tools in the toolkit that European institutions can now use to ensure that a member state of the European Union maintains its European constitutional commitments.

Yesterday at the plenary debate, both Commission President José Manuel Barroso and Commissioner for Justice, Fundamental Rights and Citizenship Viviane Reding indicated their willingness to follow the Parliament's direction. We can therefore expect an eager uptake from the Commission on the elements of the report that require the Commission's active participation.

But perhaps the most breathtaking part of the report is the list of what these various monitoring bodies can examine. Here it is worth quoting at length from the report itself, because the scope and breadth of the complaints against the Hungarian government indicate that these monitoring processes will be authorized to look at the most fundamental elements of what it means to be a robust democracy committed to the rule of law and the protection of human rights. Here is the list of items that the Hungarian government must address, taken from para. 71 of the report, where the Parliament

Urges the Hungarian authorities to implement as swiftly as possible all the measures the European Commission as the guardian of the treaties deems necessary in order to fully comply with EU law, fully comply with the decisions of the Hungarian Constitutional Court and implement as swiftly as possible the following recommendations, in line with the recommendations of the Venice Commission, the Council of Europe and other international bodies for the protection of the rule of law and fundamental rights, with a view to fully complying with the rule of law and its key requirements on the constitutional setting, the system of checks and balances and the independence of the judiciary, as well as on strong safeguards for fundamental rights, including freedom of expression, the media and religion or belief, protection of minorities, action to combat discrimination, and the right to property:

On the Fundamental Law:

- to fully restore the supremacy of the Fundamental Law by removing from it those provisions previously declared unconstitutional by the Constitutional Court;
- to reduce the recurrent use of cardinal laws in order to leave policy areas such as family, social, fiscal and budget matters to ordinary legislation and majorities;
- to implement the recommendations of the Venice Commission and, in particular, to revise the list of policy areas requiring a qualified majority with a view to ensuring meaningful future elections;
- to secure a lively parliamentary system which also respects opposition forces by allowing a reasonable time for a genuine debate between the majority and the opposition and for participation by the wider public in the legislative procedure;
- to ensure the widest possible participation by all parliamentary parties in the constitutional process, even though the relevant special majority is held by the governing coalition alone;

On checks and balances:

- to fully restore the prerogatives of the Constitutional Court as the supreme body of constitutional protection, and thus the primacy of the Fundamental Law, by removing from its text the limitations on the Constitutional Court's power to review the constitutionality of any changes to the Fundamental Law, as well as the abolition of two decades of constitutional case law; to restore the right of the Constitutional Court to review all legislation without exception, with a view to counterbalancing parliamentary and executive actions and ensuring full judicial review; such a judicial and constitutional review may be exerted in different ways in different Member States, depending on the specificities of each national constitutional history, but

once established, a Constitutional Court – like the Hungarian one, which after the fall of the communist regime has rapidly built a reputation among Supreme Courts in Europe – should not be subject to measures aimed at reducing its competences and thus undermining the rule of law;

- to restore the possibility for the judicial system to refer to the case law issued before the entry into force of the Fundamental Law, in particular in the field of fundamental rights;

- to strive for consensus when electing the members of the Constitutional Court, with meaningful involvement of the opposition, and to ensure that the members of the court are free from political influence;

- to restore the prerogatives of the parliament in the budgetary field and thus secure the full democratic legitimacy of budgetary decisions by removing the restriction of parliamentary powers by the non-parliamentary Budget Council;

- to provide clarifications on how the Hungarian authorities intend to remedy the premature termination of the term of office of senior officials with a view to securing the institutional independence of the data protection authority;

On the independence of the judiciary:

- to fully guarantee the independence of the judiciary by ensuring that the principles of irremovability and guaranteed term of office of judges, the rules governing the structure and composition of the governing bodies of the judiciary and the safeguards on the independence of the Constitutional Court are enshrined in the Fundamental Law;

- to promptly and correctly implement the abovementioned decisions of the Court of Justice of the European Union of 6 November 2012 and of the Hungarian Constitutional Court, by enabling the dismissed judges who so wish to be reinstated in their previous positions, including those presiding judges whose original executive posts are no longer vacant;

- to establish objective selection criteria, or to mandate the National Judicial Council to establish such criteria, with a view to ensuring that the rules on the transfer of cases respect the right to a fair trial and the principle of a lawful judge;

- to implement the remaining recommendations laid down in the Venice Commission's Opinion No CDL-AD(2012)020 on the cardinal acts on the judiciary that were amended following the adoption of Opinion CDL-AD(2012)001; *[NOTE: Venice Commission reports on Hungary can be found [here](#).]*

On the electoral reform:

- to invite the Venice Commission and the OSCE/ ODIHR to carry out a joint analysis of the comprehensively changed legal and institutional framework of the elections and to invite the ODIHR for a Needs Assessment Mission and a long and short term election observation.

- to ensure balanced representation within the National Election Committee;

On the media and pluralism:

- to fulfil the commitment to further discuss cooperation activities at expert level on the more long#term perspective of the freedom of the media, building on the most important remaining recommendations of the 2012 legal expertise of the Council of Europe;

- to ensure timely and close involvement of all relevant stakeholders, including media professionals, opposition parties and civil society, in any further review of this legislation, which regulates such a fundamental aspect of the functioning of a democratic society, and in the process of implementation;

- to observe the positive obligation arising from European Court of Human Rights jurisprudence under Article 10 ECHR to protect freedom of expression as one of the preconditions for a functioning democracy;

- to respect, guarantee, protect and promote the fundamental right to freedom of expression and information, as well as media freedom and pluralism, and to refrain from developing or supporting mechanisms that threaten media freedom and journalistic and editorial independence;

- to make sure that objective, legally binding procedures and mechanisms are in place for the selection and appointment of heads of public media, management boards, media councils and regulatory bodies, in line with the principles of independence, integrity, experience and professionalism, representation of the entire political and social spectrum, legal certainty and continuity;

- to provide legal guarantees regarding full protection of the confidentiality-of-sources principle and to strictly apply related European Court of Human Rights case law;

- to ensure that rules relating to political information throughout the audiovisual media sector guarantee fair access to different political competitors, opinions and viewpoints, in particular on the occasion of elections and referendums, allowing citizens to form their own opinions without undue influence from one dominant opinion#forming power;

On respect for fundamental rights, including the rights of persons belonging to minorities:

- to take, and continue with, positive actions and effective measures to ensure that the fundamental rights of all persons, including persons belonging to minorities and homeless persons, are respected and to ensure their implementation by all competent public authorities; when reviewing the definition of 'family', to take into account the legislative trend in Europe to broaden the scope of the definition of family and the negative impact of a restricted definition of family on the fundamental rights of those who will be excluded by the new and more restrictive definition;

- to take a new approach, finally assuming its responsibilities towards homeless – and therefore vulnerable – people, as set out in the international treaties on human rights to which Hungary is a signatory, such as the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union, and thus to promote fundamental rights rather than violating them by including in its Fundamental Law provisions that criminalise homeless people;

- calls on the Hungarian Government to do all in its power to strengthen the mechanism for social dialogue and comprehensive consultation and to guarantee the rights associated with this;

- calls on the Hungarian Government to increase its efforts to integrate the Roma and to lay down targeted measures to ensure their protection. Racist threats directed at the Roma must be unequivocally and resolutely repelled;

On freedom of religion or belief and recognition of churches:

- to establish clear, neutral and impartial requirements and institutional procedures for the recognition of religious organisations as churches, which respect the duty of the State to remain neutral and impartial in its relations with the various religions and beliefs and to provide effective means of redress in cases of non-recognition or lack of a decision, in line with the constitutional requirements set out in the abovementioned Decision 6/2013 of the Constitutional Court;

One more item was added to this list by amendment from Rui Tavares in the Parliament this morning:

- to cooperate with the European institutions in order to ensure that the provisions of the new National Security Law comply with the fundamental principles of the separation of powers, the independence of the judiciary, respect for private and family life and the right to an effective remedy.

In short, this is a huge list of items, which together constitute the core of the Fidesz power grab. This section of the report identifies the list of things that the Hungarian government must now change, and the mechanisms I identified above are the key ones through which compliance will be monitored and assessed.

It is hard to imagine a more sweeping indictment of the Fidesz constitutional revolution in Hungary over these last three years.

But back to where we started: with today's vote in the European Parliament. This long list of offending actions of the Hungarian government was agreed to by left and right in the European Parliament, by a large majority and with serious tools to ensure that the Hungarian government changes its ways and returns to the path of democracy, rule of law and respect for human rights.

The European Parliament is the most diverse and democratic institution in Europe. One day when the history of the European constitution is written, the Tavares Report and its enthusiastic acceptance in the European Parliament will stand for Europe at its best.

This post appeared previously on Eva Balogh's [Hungarian Spectrum](#) blog and is reposted here with kind permission by the author.

